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NETAPP, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.

Plaintiff-Counterclaim Defendant,

v.

SUN MICROSYSTEMS, INC.

Defendant-Counterclaim Plaintiff.

Case No. 3:07-CV-06053-EDL

**STIPULATION AND ~~[PROPOSED]~~ ORDER  
EXTENDING DISCOVERY**

Despite the parties' efforts to complete discovery in accordance with the existing schedule, the large breadth of issues to be addressed in the parties' litigation, and the substantial volume of discovery remaining to be completed, lead the parties to conclude that an extension of the fact discovery cutoff is necessary for the more orderly and efficient resolution of their disputes. Consequently, the parties stipulate that the fact discovery deadline should be extended from January 16, 2009 to April 24, 2009 and request that the Court enter an order to that effect.<sup>1</sup>

<sup>1</sup> This fact discovery cutoff is applicable only to the patents selected for the first stage of claim construction per the parties' June 16, 2008 Joint Report on Claim Construction (Docket No. 79) and the Court's September 5, 2008 Order Extending Discovery for Patents Not Selected for Claim Construction (Docket No. 142).

1 In light of the extension of the fact discovery deadline, the parties agree that the deadlines  
 2 in the Court's October 7, 2008 Order Following Case Management Conference (Docket No. 174)  
 3 should be modified as follows:

4 The deadline for opening expert reports should be extended from February 27, 2009 to  
 5 June 5, 2009. The deadline for rebuttal expert reports should be extended from March 20, 2009  
 6 to June 26, 2009. The close of expert discovery except on damages should be extended from  
 7 April 10, 2009 to July 17, 2009. The deadline for filing final reply briefs of summary judgment  
 8 motions should be extended from May 26, 2009 to September 1, 2009.

9 The parties also stipulate and jointly request that the Court move the hearing on summary  
 10 judgment motions on NetApp's patents from June 18, 2009 to September 24, 2009, and the  
 11 hearing on summary judgment motions on Sun's patents from June 25, 2009 to October 1, 2009.  
 12

13 Dated: November 14, 2008

WEIL, GOTSHAL & MANGES LLP

14 By: /s/ Jill J. Ho

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19 Dated: November 14, 2008

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 SUN MICROSYSTEMS, INC.

**~~PROPOSED~~ ORDER**

Having considered the parties' stipulation, the joint request for relief is **GRANTED**. The January 16, 2009 deadline for fact discovery is hereby continued to April 24, 2009, and all deadlines calculated based on the close of fact discovery are modified accordingly. The February 27, 2009 deadline for opening expert reports is hereby continued to June 5, 2009. The March 20, 2009 deadline for rebuttal expert reports is hereby continued to June 26, 2009. The April 10, 2009 close of expert discovery except on damages is hereby continued to July 17, 2009. The May 26, 2009 deadline for filing final reply briefs of summary judgment motions is hereby continued to ~~September 1, 2009~~. August 31, 2009.

The June 18, 2009 hearing on summary judgment motions on NetApp's patents is hereby continued to September 23, 2009, at 9:30 am ~~September 24, 2009~~, and the June 25, 2009 hearing on summary judgment motions on Sun's patents is hereby continued to ~~October 1, 2009~~. September 30, 2009, at 9:30 am.

**IT IS SO ORDERED.**

Dated: November 18, 2008

